

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: 06/03/2022

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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HIMELDA MENDEZ AND ON BEHALF OF	:	
ALL OTHER PERSONS SIMILARLY	:	
SITUATED,	:	
	:	
Plaintiff,	:	19-CV-9863 (VEC)
	:	
-against-	:	<u>ORDER</u>
	:	
	:	
TIM HORTONS USA INC.,	:	
	:	
Defendant.	:	
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VALERIE CAPRONI, United States District Judge:

WHEREAS on October 24, 2019, Plaintiff sued Tim Hortons USA Inc., alleging that its failure to sell store gift cards to consumers that contain writing in Braille violates Plaintiff's rights under the Americans with Disability Act ("ADA") and New York state law, Dkt. 1;

WHEREAS on February 25, 2020, Plaintiff filed an amended complaint, Dkt. 12;

WHEREAS on March 6, 2020, Defendant moved to dismiss the amended complaint, contending that Plaintiff lacks standing and has failed to state a claim, Dkt. 13;

WHEREAS the motion to dismiss is fully briefed;

WHEREAS on July 20, 2020, the Court stayed the case pending the Second Circuit's resolution of a consolidated appeal of orders granting motions to dismiss in similar matters, Dkt. 22;

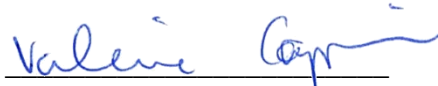
WHEREAS on June 2, 2022, the Second Circuit decided *Calcano v. Swarovski et al.*, 20-1552, holding that "Plaintiffs' conclusory, boilerplate allegations fail to establish standing," *see* Opinion, 20-1552 at 4 (2d Cir. June 2, 2020); and

WHEREAS the allegations in the complaint in this action likely fail to establish standing, as they are just as, if not more, conclusory as the allegations in the complaints at issue in the Second Circuit's *Calcano* opinion.

IT IS HEREBY ORDERED that Plaintiff may file an amended complaint by no later than five days after the mandate is issued in *Calcano v. Swarovski et al.*, 20-1552. If Plaintiff does not file an amended complaint by the deadline, then the Court will *sua sponte* dismiss Plaintiff's amended complaint pursuant to *Calcano*. If Plaintiff does amend her complaint by the deadline, the Court will dismiss the pending motion to dismiss (Dkt. 13) as moot and Defendant must answer, move, or otherwise respond to the amended complaint by no later than 21 days after the it is filed.

SO ORDERED.

Date: June 3, 2022
New York, New York


VALERIE CAPRONI
United States District Judge